

PACIFIC WEST CABLE CO. v. CITY OF SACRAMENTO, CAL. 1341

Cite as 672 F.Supp. 1322 (E.D.Cal. 1987)

pending (1) a final determination as to its validity or invalidity by a court of competent jurisdiction or (2) further order of this court;

b. No performance, compliance or adherence of plaintiff to any term or condition of such chapters pursuant to this injunction shall constitute a waiv-

injunction shall have been modified to include such amended and/or modified terms and/or conditions.

Nothing contained in this injunction shall be construed to prevent enforcement against plaintiff of the terms and conditions of the specified code chapters

APPENDIX A

SPECIAL VERDICT NO. 1

(Not Given)

- a. ~~DID DEFENDANTS DENY PLAINTIFF'S REQUEST FOR
PERMISSION TO CONSTRUCT AND OPERATE A CABLE
TELEVISION SYSTEM IN THE SACRAMENTO METROPOLITAN
AREA?~~

YES _____ NO _____

SPECIAL VERDICT NO. 2

- a. WAS THE PREDOMINANT PURPOSE UNDERLYING DEFENDANTS' USE
OF THE RFP (REQUEST FOR PROPOSAL) PROCESS TO LIMIT THE
ABILITY OF CABLE OPERATORS TO EXPRESS THEIR VIEWS AND
EXERCISE THEIR EDITORIAL JUDGMENT?

YES _____ NO _____ NOT ANSWERED X

- b. DID DEFENDANTS DENY PLAINTIFF PERMISSION TO CONSTRUCT
AND OPERATE A CABLE TELEVISION SYSTEM BECAUSE DE-
FENDANTS OPPOSE PLAINTIFF'S VIEWS?

YES _____ NO _____ NOT ANSWERED X

APPENDIX A—Continued

- c. WAS THE PREDOMINANT PURPOSE UNDERLYING DEFENDANTS' USE
AND APPLICATION OF THE RFP PROCESS TO DISCOURAGE
EXPRESSION OF ONE VIEWPOINT AND ADVANCE EXPRESSION
OF ANOTHER?

YES _____ NO _____ NOT ANSWERED X

- d. DOES THE RFP PROCESS APPLY EVENHANDEDLY (I.E.
REGARDLESS OF VIEWPOINT) TO ALL ENTITIES DESIRING
TO PROVIDE CABLE TELEVISION SERVICE?

YES _____ NO _____ NOT ANSWERED X

SPECIAL VERDICT NO. 3

- a. HAVE DEFENDANTS LEFT OPEN AMPLE ALTERNATIVE CHANNELS
OF COMMUNICATION FOR PLAINTIFF, AND PERSONS LIKE
PLAINTIFF, WHO WISH TO EXPRESS THEIR VIEWS?

YES _____ NO X

SPECIAL VERDICT NO. 4

- a. DID PLAINTIFF HAVE THE FINANCIAL AND TECHNICAL
CAPABILITIES TO CONSTRUCT AND OPERATE A CABLE
TELEVISION SYSTEM IN THE SACRAMENTO METROPOLITAN
AREA?

YES X NO _____

APPENDIX A—Continued
SPECIAL VERDICT NO. 5
(Not Given)

- a. DOES THE CONSTRUCTION AND OPERATION OF A CABLE
TELEVISION SYSTEM INVOLVE THE USE OF PUBLIC
RIGHTS OF WAY?

YES _____ NO _____

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES," IS
IT PROPER FOR DEFENDANTS TO REQUIRE THAT A CABLE
COMPANY PAY FOR THE USE OF PUBLIC RIGHTS OF WAY?

YES _____ NO _____

- c. WERE THE PAYMENTS EXCESSIVE?

YES _____ NO _____

SPECIAL VERDICT NO. 6

- a. IS THE CAPACITY OF THE PUBLIC RIGHTS OF WAY AND
UTILITY EASEMENTS IN THE SACRAMENTO METROPOLITAN
AREA LIMITED TO ANY SIGNIFICANT DEGREE? IN OTHER

APPENDIX A—Continued

SPECIAL VERDICT NO. 7

- a. DOES THE CONSTRUCTION AND OPERATION OF A CABLE
TELEVISION SYSTEM CAUSE SIGNIFICANT DISRUPTION IN
THE USE OF PUBLIC PROPERTY?

YES _____ NO X

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES,"
DID DEFENDANTS' USE OF THE RFP PROCESS RESULT IN LESS
DISRUPTION THAN WOULD OCCUR WITHOUT THE RFP PROCESS?

YES _____ NO _____

- c. WAS "DISRUPTION AND INCONVENIENCE" A SHAM USED BY
DEFENDANTS AS A PRETEXT FOR JUSTIFYING THEIR RFP
PROCESS?

YES _____ NO X

SPECIAL VERDICT NO. 8

- a. DOES THE CONSTRUCTION AND OPERATION OF A CABLE
TELEVISION SYSTEM CAUSE SIGNIFICANT SAFETY HAZARDS
TO BOTH THE PUBLIC AND WORKERS?

YES _____ NO X

APPENDIX A—Continued

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES," DID DEFENDANTS' USE OF THE RFP PROCESS RESULT IN FEWER SAFETY HAZARDS THAN WOULD OCCUR WITHOUT THE USE OF THE RFP PROCESS?

YES _____ NO _____

- c. WAS "SAFETY HAZARDS" A SHAM USED BY DEFENDANTS AS A PRETEXT FOR JUSTIFYING THE RFP PROCESS?

YES _____ NO X

SPECIAL VERDICT NO. 9

- a. DOES THE CONSTRUCTION AND OPERATION OF A CABLE TELEVISION SYSTEM SIGNIFICANTLY INTERFERE WITH THE ABILITY OF SACRAMENTO RESIDENTS TO USE THEIR PRIVATE PROPERTY?

YES _____ NO X

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES," DID DEFENDANTS' USE OF THE RFP PROCESS RESULT IN LESS INTERFERENCE WITH PRIVATE PROPERTY THAN WOULD OCCUR WITHOUT THE RFP PROCESS?

YES _____ NO _____

APPENDIX A—Continued

- c. WAS "INTERFERENCE WITH ABILITY TO USE PRIVATE
PROPERTY" A SHAM USED BY DEFENDANTS AS A PRETEXT
FOR JUSTIFYING THEIR RFP PROCESS?

YES _____ NO X

SPECIAL VERDICT NO. 10

- a. DOES THE CONSTRUCTION AND OPERATION OF A CABLE
TELEVISION SYSTEM CAUSE ANY OF THE FOLLOWING TO
A SIGNIFICANT DEGREE: NOISE, VISUAL CLUTTER,
ENVIRONMENTAL AND/OR AESTHETIC PROBLEMS?

YES _____ NO X

- b. IF YOUR ANSWER TO THE PREVIOUS QUESTION IS "YES,"
DID DEFENDANTS' USE OF THE RFP PROCESS RESULT IN
FEWER OF THESE IMPACTS THAN WOULD OCCUR WITHOUT THE
USE OF THE RFP PROCESS?

YES _____ NO _____

APPENDIX A—Continued

- c. WAS "NOISE, VISUAL CLUTTER, AND/OR OTHER ENVIRONMENTAL AND AESTHETIC IMPACTS" A SHAM USED BY DEFENDANTS AS A PRETEXT FOR JUSTIFYING THEIR RFP PROCESS?

YES _____ NO X

SPECIAL VERDICT NO. 11

(Not Given)

- a. ~~DOES THE CONSTRUCTION AND OPERATION OF A CABLE TELEVISION SYSTEM CREATE SIGNIFICANT ADMINISTRATIVE OR REGULATORY BURDENS FOR GOVERNMENT? (BURDENS ARE "SIGNIFICANT" IF THEY ARE GREATER THAN THOSE WHICH WOULD OCCUR USING THE ENCROACHMENT PERMIT PROCESS.)~~

~~YES _____ NO _____~~

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES," DID DEFENDANTS' USE OF THE RFP PROCESS PROVIDE A MORE EFFECTIVE MEANS OF MINIMIZING THE BURDENS THAN THE ENCROACHMENT PERMIT PROCESS?

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APPENDIX A—Continued
SPECIAL VERDICT NO. 12

IS "HEAD-TO-HEAD" COMPETITION AMONG CABLE TELEVISION

APPENDIX A—Continued

- d. WAS "NATURAL MONOPOLY" A SHAM USED BY DEFENDANTS TO PROMOTE THE MAKING OF CASH PAYMENTS AND PROVISION OF "IN KIND" SERVICES BY THE COMPANY ULTIMATELY SELECTED TO PROVIDE CABLE TELEVISION SERVICE TO THE SACRAMENTO MARKET?

YES X NO

- e. WAS "NATURAL MONOPOLY" A SHAM USED BY DEFENDANTS TO OBTAIN INCREASED CAMPAIGN CONTRIBUTIONS FOR LOCAL ELECTED OFFICIALS?

YES X NO

SPECIAL VERDICT NO. 13

- a. DOES THE PUBLIC AS A WHOLE BENEFIT FROM EQUAL AND UNIFORM CABLE TELEVISION SERVICE THROUGHOUT THE SACRAMENTO COMMUNITY?

YES X NO

APPENDIX A—Continued

- b. DID THE RFP PROCESS ENCOURAGE EQUAL AND UNIFORM
CABLE TELEVISION SERVICE TO A GREATER DEGREE THAN
WOULD BE ACHIEVED IN THE ABSENCE OF THE RFP PROCESS?

YES X NO

- c. WAS "EQUAL AND UNIFORM CABLE TELEVISION SERVICE"
A SHAM USED BY DEFENDANTS AS A PRETEXT FOR
JUSTIFYING THEIR RFP PROCESS?

YES NO X

SPECIAL VERDICT NO. 14

1. DOES THE PUBLIC AS A WHOLE OBTAIN SIGNIFICANT BENEFITS
FROM ANY OF THE FOLLOWING: ACCESS CHANNELS,
PRODUCTION FACILITIES, TECHNICAL ASSISTANCE AND
GRANTS?

YES X NO

APPENDIX A—Continued

- b. DID THE RFP PROCESS ENCOURAGE THE PROVISION OF THESE KINDS OF RESOURCES TO A GREATER EXTENT THAN WOULD BE PROVIDED IN THE ABSENCE OF THE RFP PROCESS?

YES X NO

- c. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES," WERE DEFENDANTS MOTIVATED TO PROVIDE SUCH BENEFITS BY EITHER A DESIRE TO OBTAIN INCREASED POLITICAL INFLUENCE FOR ELECTED OR APPOINTED LOCAL OFFICIALS OR A DESIRE TO FAVOR LOCAL OFFICIALS' POLITICAL SUPPORTERS?

YES X NO

- d. WAS THE PROVISION OF SUCH BENEFITS A SHAM USED BY DEFENDANTS AS A PRETEXT FOR JUSTIFYING THEIR RFP PROCESS?

YES NO X

APPENDIX A—Continued
SPECIAL VERDICT NO. 15

- a. DOES THE RFP PROCESS RESULT IN "BETTER" CABLE TELEVISION SERVICE, IN TERMS OF THE SYSTEM'S TECHNOLOGY, CAPABILITIES AND CHANNEL CAPACITY, THAN WOULD BE ACHIEVED WITHOUT THE RFP PROCESS?

YES _____ NO X

- b. WAS "SYSTEM TECHNOLOGY, CAPABILITY AND CHANNEL CAPACITY" A SHAM USED BY DEFENDANTS AS A PRETEXT FOR JUSTIFYING THEIR RFP PROCESS?

YES _____ NO _____ NOT ANSWERED X

SPECIAL VERDICT NO. 16

- a. DOES THE PUBLIC HAVE A SIGNIFICANT INTEREST IN THE FINANCIAL QUALIFICATIONS OR BACKGROUND OF ANY COMPANY CONSTRUCTING AND OPERATING A CABLE SYSTEM IN SACRAMENTO? (THE PUBLIC'S INTEREST IS SIGNIFICANT IF, AMONG OTHER THINGS, CONSUMERS WOULD RECEIVE REDUCED LEVELS OF CABLE SERVICES AND TECHNOLOGY IF GOVERNMENT DID NOT INQUIRE INTO THE FINANCIAL CAPABILITIES OF CABLE OPERATORS.)

YES X NO _____

APPENDIX A—Continued

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES,"
DOES THE RFP PROCESS PROMOTE THIS INTEREST?

YES X NO

- c. WAS "FINANCIAL QUALIFICATIONS" A SHAM USED BY
DEFENDANTS AS A PRETEXT FOR JUSTIFYING THEIR RFP
PROCESS?

YES NO X

SPECIAL VERDICT NO. 17

- a. DOES THE PUBLIC HAVE A SIGNIFICANT INTEREST IN THE
TECHNICAL QUALIFICATIONS OR BACKGROUND OF ANY
COMPANY CONSTRUCTING OR OPERATING A CABLE TELEVISION
SYSTEM IN SACRAMENTO? (THE PUBLIC'S INTEREST IS
SIGNIFICANT IF, AMONG OTHER THINGS, CONSUMERS WOULD
RECEIVE REDUCED LEVELS OF CABLE SERVICES AND
TECHNOLOGY IF GOVERNMENT DID NOT INQUIRE INTO THE
TECHNICAL CAPABILITIES OF CABLE OPERATORS.)

YES X NO

APPENDIX A—Continued

- b. IF YOUR ANSWER TO THE PRECEDING QUESTION IS "YES,"
DOES THE RFP PROCESS PROMOTE THIS INTEREST?
YES _____ NO X

- c. WAS "TECHNICAL QUALIFICATIONS" A SHAM USED BY
DEFENDANTS AS A PRETEXT FOR JUSTIFYING THEIR
RFP PROCESS?
YES _____ NO X

SPECIAL VERDICT NO. 18

UNDER THE INSTRUCTIONS ON DAMAGES GIVEN TO YOU, WHAT
AMOUNT OF DAMAGES, IF ANY, SHOULD BE AWARDED TO PLAINTIFF?

EXHIBIT B

259
K2

FEDERAL COMMUNICATIONS COMMISSION
PCC MAIL SECTION
WASHINGTON, D.C. 20554

JUL 28 7 03 AM '92
JUL 1992

IN REPLY REFER TO:

1800B-1B

Donald P. Ziefang
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304

Sol Shildhouse
Farrow, Shildhouse & Wilson
1400 16 Street, N.W.
Washington, D.C. 20036

RE: KUPL(AM) and KUPL-FM
Portland, Oregon
File Nos. BR-901002BL, BRH-901002D8

Dear Messrs. Ziefang and Shildhouse:

This is in reference to the Petition to Deny that Pacific West Cable Television (PacWest) filed against the license renewal applications for stations KUPL and KUPL-FM, licensed to Scripps Howard Broadcasting Co. The Petition to Deny alleges that the licensee's cable television subsidiary engaged in anticompetitive behavior. PacWest also raised these allegations in a civil suit, which was settled with no adjudicated findings. In June 1992, PacWest filed a Request for Dismissal of the Petition to Deny. PacWest and Scripps Howard certify that there was no consideration paid or received in exchange for dismissal of the Petition to Deny. See 47 C.F.R. Section 73.3588(a).

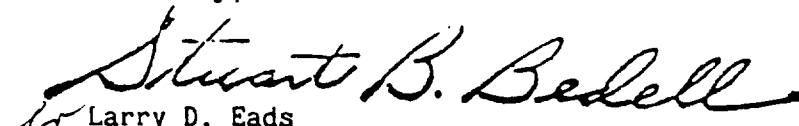
The parties have satisfied our requirements regarding the withdrawal of Petitions to Deny. It is nonetheless our practice to review independently issues raised in such petitions that are relevant to the basic qualifications of a renewal applicant. The Petition to Deny challenges the basic character qualifications of the licensee, but our review of these allegations finds no substantial and material question of fact as to whether grant of the KUPL/KUPL-FM renewal applications would be in the public interest. See Policy Regarding Character Qualifications in Broadcast Licensing, Gen. Docket No. 81-500, 102 FCC2d 1179 (1986), recon. granted in part and denied in part, 1 FCC Rcd 421 (1986), appeal dismissed sub nom., National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987), modified 5 FCC Rcd 3252 (1990).

To the extent that PacWest's Petition to Deny in this proceeding cross-references allegations made in its Petition for Reconsideration of Scripps Howard's acquisition of Station WMAR-TV, Baltimore, we also find that those matters do not adversely impact the grant of the KUPL/KUPL-FM renewal applications. However, we make no finding as to the impact of those allegations on Station WMAR-TV. Those allegations will be resolved in the

context of the WMAR-TV proceeding.

Accordingly, PacWest's Request for Dismissal of its Petition to Deny IS GRANTED and its Petition to Deny the license renewal applications of KUPL and KUPL-FM, Portland, Oregon IS DISMISSED. Further, we find that grant of the license renewal applications would serve the public interest. Accordingly, the license renewal applications of Scripps Howard Broadcast Company for stations KUPL and KUPL-FM, Portland, Oregon ARE GRANTED.

Sincerely,


for Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau

cc: Television Branch, Video Services Div. (WMAR-TV proceeding)

CERTIFICATE OF SERVICE

I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "REQUEST TO CERTIFY APPLICATION FOR REVIEW" were sent this 8th day of April, 1993, by first class United States mail, postage prepaid, to the following:

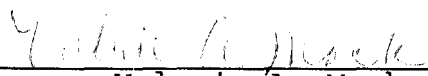
* The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

* Charles Dziedzic, Chief
Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

* Barbara Kreisman, Chief
Video Services Division
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1919 M Street, N.W., Room 700
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* By Hand



Valerie A. Mack